

Housing Health & Safety Rating Scheme Policy

The policy was first introduced 2006 (the 0605 version) and revised in 2008 (0809 version). This 2012 version is the second revision.

1. Introduction

- 1.1 The fitness-standard (which had been in force in broadly the same form for many years) was repealed by the *Housing Act 2004* and replaced by the Housing Health & Safety Rating System (HHSRS). The HHSRS applies to all residential premises, whether owner-occupied or rented (including homes rented from a Registered Provider (formerly known as Registered Social Landlords and Housing Associations)). It uses risk-assessment to calculate the effect of 29 possible hazards on the health of occupiers and others. The HHSRS is more complex than the fitness-standard it replaced but provides a more modern and comprehensive approach for dealing with house-condition problems.
- 1.2 The Council has a duty to inspect premises where we suspect the existence of a hazard. *The Housing Health & Safety Rating System (England) Regulations 2005* specify how hazards are to be scored to determine their severity. If a hazard is assessed as constituting a Category-1 hazard (the more serious of the 2 types) the Council has a duty to take action. If less serious, Category-2, hazards are found, the Council has discretionary power to require action.
- 1.3 The *Housing Act 2004* also sets out an enforcement regime for the HHSRS which includes a range of actions that can be used to deal with hazards. The enforcement actions include notices and orders which can be issued for the following purposes:
- to require improvement (Improvement Notice)
 - to prohibit use of a dwelling or part of a dwelling (Prohibition Order)
 - to formally notify the owner of the property about a hazard (Hazard Awareness Notice), or
 - to require demolition (Demolition Order).
- (It is also possible in some circumstances for the Council to make a Clearance Area by means of a Clearance Area Declaration)
- 1.4 The Improvement notices can be used to bring about repair and necessary improvement but can also address fire protection and the provision of facilities. Prohibition Orders are similar to former Closing Orders (*Housing Act 1985*) but are more flexible: They can be used to prevent use of a whole dwelling or a part, and can be used to restrict use entirely or just by individuals with specified characteristics (for example vulnerable groups such as those aged under 5 or over 60). There are also powers to take emergency remedial action or emergency prohibition action, without prior notice, to deal with situations posing imminent risk of serious harm.
- 1.5 This Policy takes account of guidance provided by the Government and, following consultation with other Oxfordshire authorities, sets out how the

Council will use its powers and reach its decisions in relation to the Housing Health & Safety Rating System (*Part 1 of the Housing Act 2004*).

1.6 The Council's *House Condition Enforcement Policy* sets out our general approach to enforcement: It explains that where it is appropriate to do so we shall try to resolve issues informally but will use our formal powers wherever necessary to achieve the required outcome. This *HHSRS Policy* explains how we shall use the formal powers provided by *Part 1 of the Housing Act 2004* once we have decided that an informal approach is not, or is no longer, appropriate.

2. Hazard Categories

2.1 The Council has a duty to take action in response to a Category-1 hazard and will take appropriate action to discharge this duty in all cases. (When a Category-1 hazard is identified we must decide which of the enforcement options specified in the *Housing Act 2004* it is most appropriate to use. These options are explained in more detail below.)

2.2 The same range of options exists in relation to Category-2 hazards if the Council decides to take action, but we do not have to do so. We are not intending to take action in response to Category-2 hazards as a matter of course but will do so in any of the following circumstances:

- Cases involving any significant Category-2 hazard(s) when a Category-1 Hazard is also present;
- Category-2 hazards assessed as falling within bands D, E & F (whether or not any Category-1 hazard also exists).
- Cases in which premises are suffering from a significant number of Category-2 hazards including one or more hazards in bands D, E or F;
- Cases involving vulnerable elderly people who would, on the advice of the Welfare Authority, derive particular benefit from having Category-2 hazards addressed;
- Cases involving vulnerable individuals who would, on the advice of the Welfare Authority or other relevant support agency, derive particular benefit from having Category-2 hazards addressed;
- Any other exceptional case determined by the Head of Regeneration and Housing.

3. Choice of appropriate enforcement action

Subject to the principles and policies set out within this and other relevant policy documents, the Council must determine which of the specific enforcement options made available under the *Housing Act 2004*, it will use in each case. As required by section 8 of the Act, the Council will provide a statement of reasons with any notice or order it serves, explaining why we decided to take the relevant action rather than any other alternative action. The enforcement options available to the Council are as follows:

- Improvement notices
- Prohibition orders
- Hazard Awareness Notices
- Emergency Remedial Action or Emergency Prohibition Orders
- Demolition Orders
- Clearance Areas

It is appropriate that the facts and circumstances of each case should be taken into account in deciding the appropriate course of action. The Council will endeavour to do so but, in broad terms, expects to use the various enforcement powers in the following situations:

3.1 Improvement Notices

3.1.1 The Council anticipates that Improvement Notices will be an appropriate and practical remedy for most hazards in most cases. Repair and / or improvement is generally considered to be cost-effective because of the demand for and high value of property in the District.

3.1.2 Where the Council determines that an Improvement Notice should be served in respect of a Category 1 Hazard, it will require works that will either remove the hazard entirely or will reduce its effect so that it ceases to be a Category-1 hazard, and will take whichever of these 2 options it considers appropriate, having considered the circumstances of the case. If the Council determines that the hazard should be reduced rather than removed entirely, we intend to require works we judge sufficient to prevent a recurrence of the Category-1 hazard in question for 5 years.

3.1.3 Where the Council determines that an Improvement Notice should be served in respect of a Category-2 Hazard, we will require works we judge sufficient either to remove the hazard or reduce it to an appropriate degree, and will make these decisions having considered the circumstances of the case.

3.1.4 The Council has the power to suspend an Improvement Notice once served and will consider this course of action where it is reasonable, in all the circumstances, to do so. The following are situations in which it may be appropriate to suspend an Improvement Notice:

- The need to obtain planning permission (or other appropriate consent) that is properly required before repairs and / or improvements can be undertaken.
- Works which cannot properly be undertaken whilst the premises are occupied and which can properly be deferred until such time as the premises fall vacant or temporary alternative accommodation can be provided.
- Personal circumstances of occupants (for example, temporary ill-health) which properly suggest that works ought to be deferred.

3.1.5 When deciding whether it is appropriate to suspend an Improvement Notice the Council will have regard to:

- the level of risk presented by the hazard(s);
- the turnover of occupants (eg tenants) at the property;

- the response of the landlord or owner or their failure to respond;
- any other relevant circumstances.

3.1.6 Suspended Improvement Notices will be reviewed after a maximum of 12 months and then at intervals of not more than 12 months, but suspension will not normally exceed 6 months.

3.1.7 Any variation to the approach described above in relation to Improvement Notices of all types will be determined by the Head of Regeneration and Housing.

3.2 Prohibition Orders

3.2.1 Prohibition Orders can be used in respect of both Category 1 and Category 2 hazards and are likely to be used:

- if repair and / or improvement appear inappropriate on grounds of practicality or excessive cost (ie the cost is unrealistic in terms of the benefit to be derived). A typical situation might be a dwelling or part of a dwelling where adequate natural lighting or adequate fire escape cannot realistically be provided. Or
- in an HMO, to prohibit the use of specified dwelling units or of common parts. This might, for example, be used if the means-of-escape from those parts is unsatisfactory and cannot realistically be improved.
- to specify the maximum number of persons who may occupy a dwelling where it is too small to meet the needs of a larger number; in particular, where there are too few bedrooms or insufficient floor space.
- in relation to premises lacking certain facilities but which are none-the-less suitable for a reduced number of occupants.

3.2.2 In addition to prohibiting all use of the premises or part in question (other than uses specifically approved by the Council), Prohibition Orders can be used to prevent specific uses (section 22 (4)(b) Housing Act 2004); this option may be employed to prevent occupation by particular descriptions of persons. The Council may consider use of this power appropriate in situations such as the following:

- premises with steep staircases or uneven floors which make them particularly hazardous to elderly occupants.
- premises with open staircase risers or widely spaced balustrades that make them particularly unsuitable for infants.

3.2.3 The Council has the power to suspend a Prohibition Order once served and will consider this course of action when the facts of a particular case appear to justify it. Situations such as the following may make that course appropriate:

- the need to restrict only future occupation and avoid or delay disruption to current occupants,
- the anticipated vacation of the premises (or part) by a particular resident, such as an elderly person in the case of an Order that will prohibit occupation by persons of such description.

- 3.2.4 Suspended Prohibition Orders will be reviewed after a maximum of 12 months and then at intervals of not more than 12 months, but suspension will not normally exceed 6 months.
- 3.2.5 Any variation to the approach described above in relation to Prohibition Orders of all types will be determined by the Head of Regeneration and Housing.
- 3.2.6 The Council will consider properly made requests for alternative uses of premises or part-premises which are subject to a Prohibition Order, and will not withhold its consent unreasonably. Any such consent will be confirmed in writing.

3.3 Hazard Awareness Notices

- 3.3.1 Hazard Awareness Notices are most likely to be used to notify owner-occupiers of the existence of hazards but might also be applicable where:
- it is judged appropriate to draw a landlord's attention to the desirability of remedial action;
 - to notify a landlord about a hazard as part of a measured enforcement response;
 - an occupant has expressed a particular view that this course is desirable (eg a private tenant who is concerned that service of an Improvement Notice will affect renewal of their shorthold-tenancy; or a tenant who, because of persistent ill-health, might not be able to tolerate works).

3.4 Emergency Remedial Action

- 3.4.1 The situations in which Emergency Remedial Action and Emergency Prohibition Orders may be used are specified by sections 40 – 45 of the *Housing Act 2004*. Specifically, the Council must be satisfied that:
- a Category-1 hazard exists, and that
 - the hazard poses an imminent risk of serious harm to health or safety, and that
 - immediate action is necessary

If these conditions are met the Council intends to take appropriate emergency action, but we do not anticipate that this will be a frequent event. In most circumstances the Council expects to be able to proceed as set out in sections 3.1- 3.3 above.

- 3.4.2 Situations in which emergency action may be appropriate include:
- residential accommodation located above commercial premises which lack a safe means of escape in the event of fire because there is no independent access;
 - risk of electrocution, fire, gassing, explosion or collapse.

3.5 Demolition Orders

Demolition Orders are a possible response to a Category-1 hazard (where they are judged the appropriate course of action). However, it is

considered unlikely that the Council will use this power and we will generally seek to use one of the other enforcement options. In determining whether to issue a Demolition Order the Council will take account of Government guidance and will consider all the circumstances of the case.

3.6 Clearance Areas

The Council can declare an area to be a Clearance Area if it is satisfied that each of the premises in the area is affected by one or more Category-1 hazards (or that they are dangerous or harmful to the health & safety of inhabitants as a result of bad arrangement or narrowness of streets). It is considered unlikely that the Council will use this power and we shall generally seek to use one of the other enforcement options. However, in determining whether to declare a Clearance Area the Council will act only in accordance with *section 289 of the Housing Act 1985 (as amended)* and having had regard to relevant Government guidance on Clearance Areas and all the circumstances of the case.

4. Failure to Comply with Notices, Orders etc

- 4.1 The *Housing Act 2004* makes failure to comply with an Improvement Notice an offence punishable by a fine of up to £5000. In addition, the Council may decide to undertake work-in-default. Taking one course of action does not exclude the other. The Council expects to undertake work-in-default where this is a realistic and practical option but will consider prosecution for serious and / or repeated offences. Any decision as to the appropriate course of action following a failure to comply with an Improvement Notice will be made in accordance with the *House Condition Enforcement Policy*.
- 4.2 Failure to comply with a Prohibition Order is also an offence punishable by a fine of up to £5,000. Following conviction, it is an offence to carry on using the premises in breach of the Prohibition Order, attracting a daily fine. Any decision as to whether to prosecute following the failure to comply with a Prohibition Order will be determined in accordance with the *House Condition Enforcement Policy*.
- 4.3 The Council will recover its costs in connection with work-in-default and will do so in accordance with its *Recovery of Costs Policy*. Any exception to this approach will be determined by the Head of Regeneration and Housing.
- 4.4 The Council will recover the costs incurred in carrying out works associated with Emergency Remedial Action and will do so in accordance with its *Recovery of Costs Policy*. Any exception to this approach will be determined by the Head of Regeneration and Housing.

(The Recovery of Costs Policy also addresses the recovery of costs associated with the preparation and service of notices and orders. See also sections 5.1.2, 5.2.2 & 5.3.2 of this policy.)

5. Tenure

The HHSRS is tenure neutral; that is, it applies as much to owner-occupied dwellings as to rented dwellings. Similarly, the actions which can be taken to resolve problems are not dependent upon ownership or the occupier's status, so all enforcement options are available to the Council regardless of whether the premises in question are owner-occupied, privately rented or belong to a social landlord (now called Registered Providers but previously known as Registered Social Landlords and Housing Associations). However, we judge that owner-occupiers are usually in a position to take informed decisions concerning maintenance and improvement issues which might affect their welfare and are then able to set their financial priorities accordingly; whereas tenants, and particularly non-RSL tenants, are not usually able to do so in the same way. For this reason the Council judges that it is appropriate for tenure to help inform its decisions about appropriate action:

5.1 Owner-occupiers

5.1.1 General approach

5.1.1.1 The Council anticipates that Hazard Awareness Notices will frequently be the appropriate course of action and intends to use Improvement Notices, Prohibition Notices and their emergency equivalents only in cases involving:

- vulnerable elderly people who, on the advice of the Welfare Authority, are judged not-capable of making informed decisions about their own welfare
- vulnerable individuals who, on the advice of the Welfare Authority or other relevant support agency require the intervention of the Council to ensure their welfare is best protected
- hazards that are judged likely to affect persons other than the owner-occupier
- serious risk of life-threatening harm, such as electrocution or fire
- any other exceptional case determined by the Head of Regeneration and Housing.

5.1.1.2 Unless an identified hazard is judged to pose an imminent risk of serious harm, the Council will contact the owner to confirm its involvement, explain the nature of the hazard and confirm the action it is intending to take. The Council will take account of any proposals or representations made by, or on behalf of the owner by the Welfare Authority or other relevant organisation, in determining what action it will then take.

5.1.1.3 Any exceptions to this approach will be determined by the Head of Regeneration and Housing.

5.1.2 Recovery of costs associated with service of notices etc.

5.1.2.1 The Council will not seek to recover costs associated with the service of Hazard Awareness Notices or those associated with serving Improvement Notices or Prohibition Orders or their emergency

equivalents in all cases. But we will usually seek to recover our costs in cases such as the following:

- where an owner has failed to respond to a written request for action given as part of a measured enforcement response and this failure gives rise to a need to serve either an Improvement Notice or a Prohibition Order
- where the Council has been given an undertaking concerning works and the terms of the undertaking have not been met
- where works carried out in response to a Notice are considered by the Council to be inadequate and require further formal action by the council

5.1.2.2 Any exceptions to this approach will be determined by the Head of Regeneration and Housing.

5.1.2.3 The *Recovery of Costs Policy* sets how any rechargeable costs will be calculated.

5.2 Social landlords

5.2.1 General approach

5.2.1.1 Social Landlords (now called Registered Providers (RPs) but previously known as Registered Social Landlords and Housing Associations) exist to provide suitable and properly maintained accommodation for their tenants. They are managed by Boards (which typically include tenant-representatives) and their performance is scrutinised by the Homes and Communities Agency (HCA). RPs normally employ staff to both manage and maintain their properties and will usually have written arrangements for reporting problems, setting out the response times they aim to achieve, and also for registering any complaints about service-failure.

On that basis the Council will not normally take action against an RP unless:

- it is satisfied that the problem in question has been properly reported to the RP and
- the RP has then failed to take appropriate action, taking into account its published or other realistic response targets.

5.2.1.2 If the Council determines that it is appropriate to take action we will then normally notify the RP that a complaint has been received and / or a hazard identified and seek their comments and proposals. Only in cases where we judge that an unsatisfactory response has been received will the Council take further action, and will then determine which of the available enforcement options is the most appropriate, taking into account the facts of the case.

5.2.1.3 Any exceptions to this approach will be determined by the Head of Regeneration and Housing.

5.2.2 Recovery of costs associated with service of notices etc.

5.2.2.1 In the event that an Improvement Notice or Prohibition Notice is served, the Council will seek to recover the associated costs and will do so in accordance with its *Recovery of Costs Policy*.

5.2.2.2 The Council will not normally seek to recover costs associated with the service of Hazard Awareness Notices.

5.2.2.3 In the case of Emergency Prohibition Orders and Emergency Remedial Action, the Council will determine whether the RP might reasonably have been aware of the hazard(s) in question and might properly have taken action that would have resolved the problem. If we conclude that this is the case, we will seek to recover the costs associated with our decision-making and notice service and will do so in accordance with our *Recovery of Costs Policy*.

5.2.2.4 Any exceptions to this approach will be determined by the Head of Regeneration and Housing.

5.3 Private landlords

5.3.1 General approach

5.3.1.1 The Council will proceed in accordance with its *House Condition Enforcement Policy*; that is, we shall seek to proceed informally to start with, unless we judged that:

- a hazard is particularly serious (whether or not immediate action is required, and whether the hazard in question is likely to affect a tenant, an employee or a member of the public), or
- there are extensive serious hazards (whether or not immediate action is required, and whether the hazards in question are likely to affect a tenant, an employee or a member of the public), or
- the landlord in question is known to have failed, on a previous occasion, to take appropriate action in response to an informal approach.

In cases where an informal approach is judged appropriate we will contact the landlord (or his / her agent) to confirm our involvement, explain the nature of the hazard and seek the landlord / agent's proposals for remedying the problem. Unless we already hold the required information, a Requisition for Information Notice is also likely to be served at this point. If satisfactory proposals have been received and agreed, and provided matters then proceed to a satisfactory conclusion, we will not normally need to take any further action to discharge our duties.

5.3.1.2 Landlords are expected either to provide any agent acting for them with sufficient authority to act on their behalf in the event that they are contacted by the Council, or to ensure that they maintain appropriate communication with their agent in order that appropriate decisions and responses can be provided to the Council. The failure of an agent to respond to communication from us or any failure to take appropriate action will be treated as a failure by the landlord.

5.3.1.3 If the Council receives:

- no response from the landlord / agent, or
- a response it judges inadequate, or
- proposals that were judged acceptable but which are not then followed-through (for example if works fail to start when agreed, fail to make proper progress or are completed to an inadequate standard),

we shall determine whether to take any further informal action or to proceed with formal action by taking whichever of the available enforcement actions we judge to be the most appropriate in accordance with this Policy. In the case of further informal action we will require:

- in the case of a landlord who has failed to provide a response: that an adequate response is received and then followed through
- in the case of a landlord who has previously provided proposals that were judged acceptable but which have not then been followed-through: that those proposals are carried through to the required conclusion by the agreed date (or any such revised date that we may judge it appropriate to set).

5.3.1.4 If, having pursued any such further informal action, the Council concludes that the landlord / agent has failed to take appropriate action, we will take formal action.

5.3.2 Recovery of costs associated with service of notices etc.

5.3.2.1 In the event that an Improvement Notice or Prohibition Notice is served, the Council will seek to recover the associated costs and will do so in accordance with its *Recovery of Costs Policy*.

5.3.2.2 The Council will not normally seek to recover costs associated with the service of Hazard Awareness Notices.

5.3.2.3 In the case of Emergency Prohibition Orders and Emergency Remedial Action, we shall determine whether the landlord might reasonably have been aware of the hazard(s) in question and might properly have taken action that would have resolved the problem. If we conclude that this is the case, we will seek to recover the costs associated with our decision making and notice service and will do so in accordance with our *Recovery of Costs Policy*.

5.3.2.4 Any exceptions to this approach will be determined by the Head of Regeneration and Housing.
